



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Midwest Pipeliners, Inc.

File: B-250795

Date: January 12, 1993

Dennis E. Jontz, Esq., Civerolo, Wolf, Gralow & Hill, for the protester.

Col. Curt Newill, Department of the Air Force, for the agency.

Charles W. Morrow, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that bid could not be rejected for taking exception to invitation for bids specification, which was assertedly unduly restrictive, is untimely under the General Accounting Office Bid Protest Regulations where the protest is filed after bid opening.

DECISION

Midwest Pipeliners, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F23606-92-B-0023, issued by the Department of the Air Force, Whiteman Air Force Base (AFB), Missouri, for repair of the base sewer system. Midwest contends that the Air Force improperly determined its bid to be nonresponsive based upon an allegedly unduly restrictive specification.

We dismiss the protest as untimely.

On August 17, 1992, the Air Force issued the IFB to obtain a contractor to furnish all labor and materials to repair base sewers at Whiteman AFB. The contractor was required to repair and/or replace 7,276 linear feet of 8-inch flexible structural sewer liners, reconnect 8 service connections, replace 10 shrubs, and seed 280 square yards of soil. The flexible structural sewer liners were required to possess the following requirements:

"Flexible liner materials shall be a polyester fiber felt tubing lined on one side with a polyurethane or polyvinyl chloride and fully impregnated with a liquid thermal saving resin as specified. The polyester filled tubing, including the

polyurethane or polyvinyl chloride covered felt and the thermal setting resin shall meet manufacturer's standards. The cured lining shall be a hard and permeable pipe which shall conform to minimum structural standards applicable in ASTM D-6384, 3,000 psi (pounds per square inch) tensile stress, ASTM D-790 for 3,000 psi for flexural stress, ASTM D-790 for 250,000 psi for modulus of elasticity. The finished liner shall incorporate thermal setting materials which will withstand the corrosive effects of normal sewage."

On September 16, the Air Force received two bids in response to the IFB, which included Midwest's lowest priced bid of \$354,593.19. Spinello, Ltd. submitted the second low bid priced at \$378,797.75. Although Midwest was the low bidder, it proposed to furnish a "U-Liner" sewer liner, instead of the flexible structural sewer liner. The IFB did not request or authorize products that did not meet the specification requirements. The Air Force determined that the "U-Liner" sewer liner was unacceptable because it did not meet the requirement for polyester fiber felt tubing lined on one side with polyurethane or polyvinyl chloride and fully impregnated with a liquid thermal "setting" resin. The U-Liner is a polyethylene plastic pipe liner with a semi-rigid deformed/reformed pipe that has lower modules of elasticity than the specified flexible structural sewer liner. Therefore, the Air Force rejected Midwest's bid as nonresponsive and awarded the contract to Spinello on September 30. Midwest filed this protest on October 7.

Midwest does not dispute that its sewer liner did not meet the technical requirements of the flexible structural sewer liner. Indeed, Midwest admits to being aware of only one product that can actually meet these technical requirements. Midwest asserts, however, that the U-Liner sewer liner is sufficient to meet the Air Force's needs at a lower cost, despite not meeting the IFB requirements. Midwest argues that its bid was improperly rejected because the Air Force's requirement for a flexible structural sewer liner allegedly exceeds the government's minimum needs and is unduly restrictive.

Any bid that does not conform to applicable specifications must be rejected. Federal Acquisition Regulation § 14.404-2(b). A responsive bid represents an unequivocal offer to provide the exact thing called for in the IFB. See Kincaid Equip. Mfg., B-246079, Feb. 3, 1992, 92-1 CPD ¶ 140. Here, Midwest's bid took exception to a clear IFB

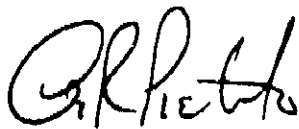
requirement and was properly rejected as nonresponsive.¹
Id.

Midwest essentially protests that the Air Force's specification requiring only flexible structural sewer liners is unduly restrictive. Our Bid Protest Regulations, require that protests based upon alleged solicitation improprieties which are apparent prior to bid opening must be filed prior to bid opening. See 4 C.F.R. § 21.2(a)(1) (1992). Here, the specification which required flexible structural sewer liners was apparent from reading the IFB prior to bid opening. Therefore, Midwest's post-bid opening protest against the specification is untimely.

Midwest nevertheless argues that its protest should be considered because the protest meets the requirements for waiving timeliness under our good cause or significant issue exceptions. 4 C.F.R. § 21.2(c).

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Industrial Acoustics Co., Inc.--Recon., B-246260.2, Jan. 28, 1992, 92-1 CPD ¶ 120. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. The only exceptions to the timeliness requirements are where there was good cause for the untimely filing (some compelling reason beyond the protester's control prevented the protester from filing a timely protest) or the protest presents a significant issue (one of wide spread interest to the procurement community or one that has not been considered before). Id. This protest falls under neither exception, since nothing prevented Midwest from timely protesting this specification prior to bid opening nor is this issue concerning a sewer pipe specification of widespread interest to the procurement community. See Industrial Acoustics Co., Inc.--Recon., supra.

The protest is dismissed.


for James A. Spangenberg
Assistant General Counsel

¹While Midwest argues that the agency encouraged it to submit its bid based on an alternate product, an agency is not authorized to accept a nonresponsive bid. A.D. Roe Co. Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194.